

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of V. V. Kiehl, 070915 Signalman C&S, with headquarters at Project Trailer, West Fairview, PA.

A. Claim that the Company violated the Current Agreement between Consolidated Rail Corporation and Brotherhood of Railroad Signalmen, particularly Rules 5-A-1 and 6-A-1(a) when on the date listed below they refused to let V. V. Kiehl work his established work week of forty (40) hours by suspending him for the date listed below.

July 17, 1984 7:00 A.M. - 5:30 P.M. 10 hours

B. Claim that since V. V. Kiehl was not allowed to work on the date mentioned above, that he be paid a total of ten (10) hours at the straight time rate of pay for his present position which is stated above."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant had established work hours of 7:00 A.M. to 5:30 P.M. On July 17, 1984, Claimant called in at approximately 7:30 A.M. to indicate that he would be late. Carrier denied him permission to work on that day.

The Organization argues that Carrier's suspension of the Claimant's right to work amounts to discipline. It maintains that the Carrier violated Rule 6-A-1(a) which reads in pertinent part:

"Except as provided ..., an employee shall not be reprimanded, suspended or dismissed from service without a fair and impartial trial"

The Carrier argues that Claimant did not advise prior to his assignment that he would be late. Claimant was late as he did not arrive at the advertised starting time. It holds that when the Claimant reported late, the Carrier was under no obligation to allow him to complete the work day. It further argues that this issue had prior resolution on the property.

The record at bar is very limited by the on-property correspondence. It only indicates that the Claimant was one half hour late when he called the Carrier. Arrival at work would have consumed some additional time. There is nothing in the record to account for his absence at the work site at the starting time of his assignment or for the Carrier's decision to disallow his working the remainder of his ten (10) hour day.

Employees must report at scheduled starting time absent advance approval or exceptional circumstance. Claimant did not have advance approval. There is no evidence of exceptional circumstance beyond Claimant's control. Clearly, the Carrier has to maintain control over tardiness.

This Board has carefully reviewed the facts and circumstances of this case and all of the Awards presented by the parties. We find that this case differs from past Awards. Herein, there is no evidence that the Carrier had any prior problem with the tardiness of this Claimant. There is no evidence that the Carrier had an established rule or had warned the Claimant employees of the penalty for being late (Third Division Awards 24428, 23294, 22904, 22287, 21598, 8045, 7210). There is no evidence that it was impractical to use the Claimant at a later time in the day (Third Division Awards 20153, 20274).

Carrier's position that a similar case not pursued to arbitration sets precedent on the property (System Docket 1452), is challenged herein by this case at bar. We do not agree with Carrier's position. Our review finds that said case does not overcome the aforesaid issues. Arguments not raised on property, including the June 1, 1984 notice, come too late for this Board's consideration.

Past Awards of this Board have held that where employees were warned or where lateness resulted in rearranging Carrier's forces, the employee could be denied the right to work after being late and the Carrier could also initiate discipline (SBA 894, Award No. 94). We concur with those Awards.

This Board finds no evidence in the instant case that Carrier's actions were based on established rules which were known by the employees, or based on circumstances which made it impractical to utilize Claimant due to his lateness. The Board is constrained to find that the Carrier's action was unreasonable in determining that Claimant's arrival would not be accepted on .

that date. Carrier's action must be viewed as punitive and disciplinary in principle. Claimant shall be paid from the time when he could have arrived at the work site to the end of his shift. Failing Agreement on such time within sixty (60) days from this Award, Claimant is to be paid for nine (9) hours at the straight time rate of pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT Board
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.